REMARKS/ARGUMENTS

1.)   Claim Amendments

Claims 1, 3-8, and 10-14 are pending in the application. The Applicant has amended claims 1, 3, 7, 8, 10, and 14. Favorable reconsideration of the application is respectfully requested in view of the foregoing amendments and the following remarks.

2.)   Claim Rejections – 35 U.S.C. § 102(e)

The Examiner rejected claims 1, 3, 4, 8, 10 and 11 under 35 U.S.C. § 102(e) as being anticipated by Huart, et al. (US 2003/0158968). The Applicant respectfully disagrees in part and has amended the claims, in part, to further clarify differences from Huart. The Examiner's consideration of the amended claims is respectfully requested.

Regarding independent claims 1 and 8, the Applicant contends as follows.

First, for unknown reasons, the Examiner continues to equate the claimed funnel network element with a codec. This was discussed in the telephone conference between the Applicant's attorney, Examiner John, and Primary Examiner Jean-Gilles, and *it was agreed that the funnel network element and the codec are not the same thing*. They are in completely different locations, with the codecs being located in the endpoints and the funnel network element being located at an intermediate point between the endpoints and between two networks involved in the communication. The codecs code and decode the communication, and the funnel network element is an intermediate node that limits the available bandwidth as the communication passes through. Thus, the funnel network element is a physical limitation in the path of the communication, and the codecs in the endpoints encode the communication to account for it. Therefore, the funnel network element differs from the codecs in both location and function. Huart does not teach or suggest a funnel network element.

Second, Huart determines the bandwidth capability of region-to-region links in a completely different way than what the Applicant claims. As noted by the Examiner, FIG. 7 of Huart shows that a server receives a request for an IP address. The server determines a network location for the endpoint and returns a region identifier. The call

manager then uses the region identifiers for each endpoint to enter the table of FIG. 6 and determine a codec based on the bandwidth limitations of the region-to-region links.

This is completely different than the Applicant's claimed invention. As noted in claim 1, the server sends an address detection message towards the first endpoint device, and then selects an advertised codec based upon whether an answer to the address detection message includes the address of the bandwidth-limiting funnel network element. As noted on page 12, lines 3-6 of the Applicant's specification, in one embodiment, the address detection message is a path-discovery message suitable to provide the network addresses of the network elements it traverses. Thus, the answer to the address detection message includes the addresses of all intervening nodes. No such message is disclosed in Huart. Therefore, Huart cannot teach or suggest a method in which an advertised codec is selected based upon whether an answer to an address detection message includes the address of the bandwidth-limiting funnel network element.

Third, Huart does not teach or suggest that the endpoints advertise the codecs they are capable of using. In the Applicant's claimed invention, the server receives a communication request from a first one of the endpoint devices, the request containing a set of advertised codecs for the communication. The selection step then selects an *advertised* codec based upon whether the answer to the address detection message includes the address of the bandwidth-limiting funnel network element. These steps are not taught or suggested by Huart. Instead, Huart's call manager selects the codec according to the network regions in which the endpoints are located. (Para. 0029).

For all the above reasons, the Applicant respectfully requests the allowance of amended independent claims 1 and 8. Claims 3-4 and 10-11 depend from amended claims 1 and 8, respectively, and recite further limitations in combination with the novel elements of claims 1 and 8. Therefore, the allowance of claims 3, 4, 10, and 11 is respectfully requested.

3.)   Claim Rejections – 35 U.S.C. § 103(a)

The Examiner rejected claims 5-7 and 12-14 under 35 U.S.C. § 103(a) as being unpatentable over Huart in view of Garakani (US 6,578,087). Claims 5-7 and 12-14

depend from amended claims 1 and 8, respectively, and the Applicant contends the amendments discussed above with respect to the novelty rejection also distinguish claims 5-7 and 12-14 from Huart and Garakani. The Examiner's consideration of the amended claims is respectfully requested.

First, the Examiner states that Huart discloses an address detection message and path discovery message. This is incorrect because there is no teaching or suggestion in Huart that the request for a network address received by the server is returned with the answer including the addresses of all intervening network elements, as claimed by the Applicant.

Second, the Examiner cites Garakani for disclosing a TRACEROUTE message. However, Garakani's disclosure is completely out of context and merely demonstrates that TRACEROUTE messages exist. There is no teaching or suggestion for using the TRACEROUTE message for the purpose claimed by the Applicant, i.e., to identify whether a bandwidth-limiting funnel network element is in the path of the communication, and to select a codec accordingly.
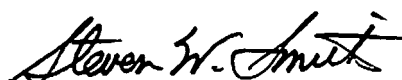
For all the above reasons, the Applicant respectfully requests the allowance of claims 5-7 and 12-14.

4.) Conclusion

In view of the foregoing remarks, the Applicant believes all of the claims currently pending in the Application to be in condition for allowance. The Applicant, therefore, respectfully requests that the Examiner withdraw all rejections and issue a Notice of Allowance for claims 1, 3-8, and 10-14.

The Applicant requests a telephonic interview if the Examiner has any questions or requires any additional information that would expedite the prosecution of the Application.

Respectfully submitted,

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